

EDNA JARVIS

IBLA 94-53

Decided January 11, 1994

Appeal from a decision of the Arizona State Office, Bureau of Land Management, denying an exemption from payment of rental fees for mining claims A MC 323594 through A MC 323598.

Set aside and remanded.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claim Certificates or Notices of Location--Mining Claims: Recordation of Certificate or Notice of Location--Mining Claims: Rental or Claim Maintenance Fees

The Interior Department and Related Agencies Appropriations Act of 1993, P.L. 102-381, 106 Stat. 1374, and the regulations in 43 CFR 3833 (58 FR 38186 (July 15, 1993)), require payment of a \$100 per claim or site rental fee for assessment years 1992-93 and 1993-94.

In the alternative, a claimant holding 10 or fewer claims and meeting the other requirements set out in the act and regulations may file a certificate of exemption with BLM on or before Aug. 31, 1993. It

is proper for BLM to deny exemption when BLM records indicate the claimant holds more than 10 claims. When there is evidence on appeal that 10 or fewer claims

had actually been perfected, rendering the balance of the claims abandoned, it is proper to set BLM's decision aside and remand the case to BLM for a determination of whether the claimant has met the rental fee exemption requirements for the perfected claims.

APPEARANCES: Edna Jarvis, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Edna Jarvis appeals from an October 6, 1993, decision of the Arizona State Office, Bureau of Land Management (BLM), denying exemption from payment of rental fees for the assessment years 1992-93 and 1993-94 for the Ajax # 1 through # 5 mining claims (A MC 323594 through A MC 323598). The claims were located on July 30, 1992, in sec. 5, T. 22 S., R. 10 E., Gila and Salt River Meridian, Pima County, Arizona.

The Interior Department and Related Agencies Appropriations Act of 1993, P.L. 102-381, 106 Stat. 1374, and the regulations in 43 CFR 3833 (58 FR 38186 (July 15, 1993)), require a yearly payment of a \$100 per claim or site rental fee in assessment years 1993 and 1994. The same provisions also allow the claimant to file a certificate of exemption for the years 1993 and 1994 with BLM on or before August 31, 1993. The failure to pay the rental fees or file the certificate of exemption is conclusively deemed to constitute abandonment of the mining claim or site.

[1] On August 30, 1993, Jarvis filed a Certification of Exemption from Payment of Rental Fee for the five Ajax claims. BLM then issued its October 6, 1993, decision rejecting Jarvis' certificate of exemption for assessment year 1992-93. 1/ The basis for its decision was that P.L. 102-381 and 43 CFR 3833.1-6 (58 FR 38199 (Jan. 19, 1993)) "Rental Fee Exemption Qualifications," and 43 CFR 3833.1-7 (58 FR 38200 (Jan. 19, 1993)) "Filing Requirements for Rental Fee Exemptions," limit the exemption from rental payment to claimants holding 10 or fewer mining claims, millsites, and tunnel sites on Federal lands in the United States. BLM stated that its records indicated that Jarvis owned 34 mining claims in Arizona. Jarvis appealed. 2/

In her notice of appeal, Jarvis asserts that Ajax # 1 through # 5 are the only claims held by her when she filed for exemption because the other claims noted by BLM had never been "perfected." In support of her contention she argues that her failure to perfect the other claims is evident from the fact that the location notices for those claims had not been "properly filed on and recorded in Pima County." 3/

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1988), provides that an owner of an unpatented mining claim must file a copy of the official record of the notice of location or certificate of location with BLM within 90 days after the date the claim was located. Failure to file is conclusively deemed to constitute abandonment of the claim. 43 U.S.C. § 1744(c) (1988). See United States v. Locke, 471 U.S. 84, 105 S. Ct. 1785 (1985). See also 43 CFR 3833.1-2(a) and 43 CFR 3833.4. Copies of notice of location for the 5 Ajax claims and the other 29 claims were filed with BLM on August 13, 1992. Jarvis' certificate of exemption lists book and pages of recordation with Pima County for the location

1/ The decision also held that, without an approved exemption for 1992-93, the request for assessment year 1993-94 was moot.

2/ Jarvis also sought a stay of BLM's decision which was granted in an order dated Dec. 13, 1993.

3/ Jarvis states that the "thirty-four (34) claims indicated by you [BLM] had not been properly filed on and recorded in Pima County." The 34 claims noted by BLM include the Ajax claims. We presume that Jarvis intended

to say 29 claims instead of 34 claims, and that she has not filed location notices for the other 29 claims with the County in compliance with A.R.S. § 27-203 (1991). Her failure to do so constitutes abandonment (A.R.S. § 27-203 E. (1991)).

notices for the 5 Ajax claims, but there is nothing in the record to indicate that the location notices for the other 29 claims had ever been recorded.

The regulations expressly contemplate filing a certificate of location with BLM before it is recorded with the state agency. Under 43 CFR 3833.1-2 a locator must file a copy of the certificate or notice of location that "was or will be filed under state law" with BLM. (Emphasis added.) Only a copy of the official record must be filed with BLM, and the claimant is free to record the certificate of location with the state before, on the same day as, or after filing with BLM. August F. Plachta, 87 IBLA 223, 224 (1985). Jarvis properly noted that under A.R.S. § 27-203 E. (1991), if the notice of location is not filed the claims are deemed abandoned.

We note that BLM has recognized that the actual ownership, not the ownership as shown on BLM records, is controlling when determining whether a claimant qualifies for an exemption, and that BLM's records may not accurately reflect the actual ownership on the date the claimant files for exemption. Instruction Memorandum No. 94-20 (Oct. 15, 1993). Having no way to confirm that the claim notices for the other 29 claims were not recorded, and not knowing whether Jarvis has met the other requirements for exemption from payment of rental fees for the 5 Ajax claims, we set aside BLM's decision and remand the case to BLM for a determination of these issues. 4/ If BLM determines that only the Ajax claims are properly recorded, it must also determine whether Jarvis has complied with all other requirements for rental fee exemption set out at 43 CFR 3833.1-6 and 43 CFR 3833.1-7 (58 FR 38199 (July 15, 1993)).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded to BLM for action consistent with this decision.

R. W. Mullen
Administrative Judge

I concur:

David L. Hughes
Administrative Judge

4/ The BLM decision did not address the abandonment of the other 29 claims, and conclusive presumption of abandonment of those claims is not an issue in this appeal.

